

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

## **OPINION AND ORDER**

This matter comes before the court on Defendants' Motion to Dismiss, pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure. The court has reviewed the Petition and the Writ of Mandamus which were filed on November 14, 2016 in the District Court of Pittsburg County, State of Oklahoma and removed by the defendants to this court on December 12, 2016. (Dkt. # 2). Based upon the state court petition and the allegations in the writ, this court assumes plaintiff is attempting to pursue alleged constitutional violations under 42 U.S.C. § 1983.

The pleadings filed by plaintiff are deficient and are subject to dismissal, pursuant to 28 U.S.C. § 1915(e)(2)(B), in their present form. Within fourteen (14) days of the entry of this Order, Plaintiff must file an amended complaint on the Court's form. The amended complaint must set forth each person he is suing under 42 U.S.C. § 1983. *See Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1237 (10th Cir. 1999) (holding that “a cause

of action under § 1983 requires a deprivation of a civil right by a ‘person’ acting under color of state law”). Plaintiff must state specifically how and when each named defendant allegedly violated his constitutional rights. *See* Fed. R. Civ. P. 8(a). Plaintiff is admonished that simply alleging that a defendant is an employee or supervisor of a state agency is inadequate to state a claim. He must go further and state how the named defendant’s personal participation violated his constitutional rights. The amended complaint must include all claims and supporting material to be considered by the Court. In addition, the amended complaint must be complete in itself, including exhibits, and may not reference or attempt to incorporate material from the original pleadings. *See* Local Civil Rule 9.2(c). Furthermore, pursuant to Local Civil Rule 5.2(a), the amended complaint must be clearly legible.

The Court Clerk is directed to send Plaintiff the proper form for filing an amended complaint. If Plaintiff fails to file an amended complaint by the deadline set forth in this Order, this action shall be dismissed for failure to state a claim upon which relief may be granted.

Additionally, all pending motions are dismissed as moot.

It is so ordered on this 6th day of September, 2017.



James H. Payne  
United States District Judge  
Eastern District of Oklahoma